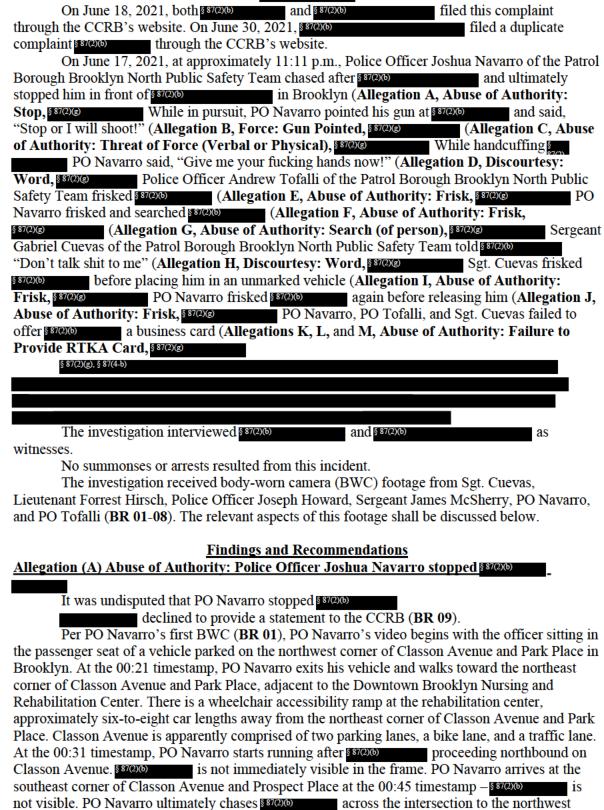
CCRB INVESTIGATIVE RECOMMENDATION

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Investigator:		Team:	CCRB Case #:		Force	\checkmark	Discourt.	Ш	
Ethan Waterman		Squad #10	202103678	☑	Abuse		O.L.		Injury
Incident Date(s)		Location of Incident:			18 N	10. SC	OL	I	Precinct:
Thursday, 06/17/2021 11:11 PM		In front of § ^{87(2)(b)} Brooklyn	in		12/1	17/202	22		77
Date/Time CV Reported		CV Reported At:	How CV Reported:		Date/Tim	e Rece	ived at CCI	₹B	
Fri, 06/18/2021 12:06 AM		CCRB	On-line website		Fri, 06/18	/2021	12:06 AM		
Complainant/Victim	Туре	Home Addre	ess						
Witness(es)		Home Addre	ess						
Subject Officer(s)	Shield	TaxID	Command						
1. PO Joshua Navarro	16066	957891	PBBN SU PST						
2. SGT Gabriel Cuevas	00000	945633	PBBN SU PST						
3. PO Andrew Tofalli	26431	955584	PBBN SU PST						
Witness Officer(s)	Shield N	o Tax No	Cmd Name						
1. PO Joseph Howard	17787	960683	PBBN SU PST						
2. SGT James Mcsherry	03934	942175	PBBN SU PST						
3. LT SA Forrest Hirsch	00000	941905	PBBN SU PST						
Officer(s)	Allegatio	on			Inv	estiga	tor Recon	ıme	ndation
A . PO Joshua Navarro	Abuse: P	olice Officer Joshua Na	varro stopped § 87(2)(b)						
B . PO Joshua Navarro	Force: Po	olice Officer Joshua Nav	varro pointed his gun	at					
C . PO Joshua Navarro		olice Officer Joshua Na with the use of force.	varro threatened § 8702	?)(b)					
D . PO Joshua Navarro	Discourte	esy: Police Officer Joshu cously to \$87(2)(6)	ıa Navarro spoke						
E . PO Andrew Tofalli		olice Officer Andrew To	ofalli frisked 8 87(2)(6)						
F . PO Joshua Navarro	Abuse: P	olice Officer Joshua Na	varro frisked § 87(2)(b)						
G . PO Joshua Navarro	Abuse: P	olice Officer Joshua Na	varro searched § 87(2)(t	p)					
H . SGT Gabriel Cuevas	Discourte to § 87(2)(b)	esy: Sergeant Gabriel Cu	ievas spoke discourt	eous	sly				
I . SGT Gabriel Cuevas	Abuse: S	ergeant Gabriel Cuevas	frisked § 87(2)(b)						

Officer(s)	Allegation	Investigator Recommendation
J . PO Joshua Navarro	Abuse: Police Officer Joshua Navarro frisked §87(2)(b)	
K . PO Joshua Navarro	Abuse: Police Officer Joshua Navarro failed to provide with a business card.	
L . PO Andrew Tofalli	Abuse: Police Officer Andrew Tofalli failed to provide with a business card.	
M . SGT Gabriel Cuevas	Abuse: Sergeant Gabriel Cuevas failed to provide with a business card.	
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		

Case Summary



corner, holding his gun pointed (see Allegations B and C). At the 00:58 timestamp, \$37000

falls to the ground under his own power and PO Navarro begins to handcuff him.

In his CCRB interview (**BR 10**), PO Navarro said that he was sitting in the passenger seat of his police car on the northwest corner of Park Place and Classon Avenue in Brooklyn while his partner, PO Tofalli, went inside a bodega to get some water. There were streetlights illuminating the street. It was a hot June night. PO Navarro could not approximate the temperature. PO Navarro saw a person wearing a ski mask, a black winter bubble coat (PO Navarro approximated the coat to be waist-length, but was unsure), and sweatpants. The person's clothing got PO Navarro's attention given that it was a hot night. PO Navarro thought, "That's weird, but whatever." PO Navarro did not know where the person's hands were at that moment. PO Navarro continued to sit in his car and wait for PO Tofalli.

started to walk westbound from the northeast corner of Park Place and crossed the street, Classon Avenue towards PO Navarro's car. Right before \$87(2)(6) looked at PO Navarro's car. [87(2)6) noticed that PO Navarro was a police officer — PO Navarro noted that § 87(2)(6) may have seen PO Navarro's patch on his shirt and that PO Navarro's car was a "dead giveaway" that he was a police officer. Upon realizing that PO Navarro was a police officer, § 87(2)(b) changed his path of travel. PO Navarro, at this point, thought, "Okay, that's a little bit strange." PO Navarro thought, "Why did he avert away from us?" but noted that "there's a million reasons" why he did so. PO Navarro continued to observe \$87(2)(6) walked away from PO Navarro's car across the street from the side that PO Navarro was parked. PO Navarro saw that \$85(2)(b) kept looking back towards PO Navarro and his car. PO Navarro made eye contact with \$87(2)(6) walked to a building that had a switchback wheelchair accessibility ramp. It was dark in this area. PO Navarro believed the building was some sort of medical facility. § 87(2)(6) faced toward the railing by the wheelchair accessibility ramp. PO Navarro could see \$87(2)(6) looked over his back. § 87(2)(b) shoulder. Service dropped his hands and it appeared that services was "doing something around his waist and readjusting and he keeps looking back while he's doing it." PO Navarro, thought, "Now, that's very strange to me." To this point, PO Navarro had observed for no more than a couple minutes.

PO Tofalli got back in the car. PO Navarro explained to PO Tofalli, "Yo, I don't know what this guy was doing, but he's dressed really warm when it's already hot out – it's a summer night. When he saw the car, he kinda diverted his attention away. He's wearing a ski mask, which, again, you know, the pandemic's going on, of course you have to wear your face mask at that point – but again, it's a ski mask. To me, most of the people around are wearing cloth masks that doesn't cover your entire face, because, again, it's warm out, it's summertime. Again, coat with long sleeves and long pants that looked like sweatpants from where I was." PO Navarro told PO Tofalli, "Look man, I'm gonna get out and just talk to this guy and approach him and see what's going on, you know. He's just acting strange."

PO Navarro walked up to \$87000 to speak with him. PO Navarro did not see any outlines on \$87000 clothing at this point. As PO Navarro approached, he was thinking, "maybe this guy turned – he's peeing or something like that but I'm going to get a closer look because it's my job, right?"

When saw PO Navarro step onto the sidewalk and walk towards him, grabbed his waistband and started running as fast as he could while holding his waistband. Because of the way save had to pick up the front of his jacket/upper hip area, PO Navarro asked himself, "What is that? What did he just grab and run away from me?" PO Navarro thought that the item in the waistband could have been a firearm, a weapon, or something else that wanted to hide, given the apparent weight of the object and save holding the object. PO Navarro could not see any outlines of any items on save had turned away from PO Navarro.

Given the way that \$87000 was dressed (that he was covered up and wearing a ski mask), the way that he diverted his direction of travel upon seeing PO Navarro, and the way that was adjusting his waistband, PO Navarro was wondering whether \$87000 had

been planning to go into the bodega to try to rob someone.

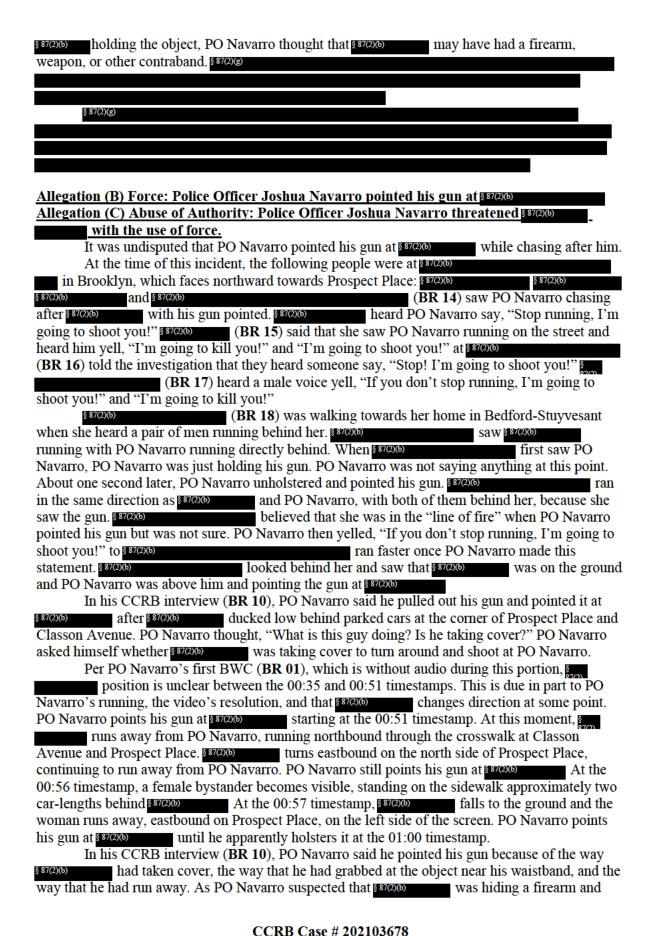
PO Navarro prepared a stop report regarding this incident (**BR 11**). PO Navarro wrote the following in the report's narrative regarding the circumstances that led to the stop: "at tpo r/o did observe subject wearing uncharacteristically warm clothing for the temperature outside (large bubble coat, several pairs of sweatpants, and a ski mask). when subject noticed r/o observing him, he bladed body away from r/o and abruptly changed his course of travel. subject appeared nervous and looked over shoulder at r/o while continuing away from r/o's position. subject then doubled back and leaned on a banister of a nearby accessibility [sic] ramp and adjusted waistband while facing wall of building. object in subjects pants seemed bulky and heavy and r/o believed that subject was concealing a firearm."

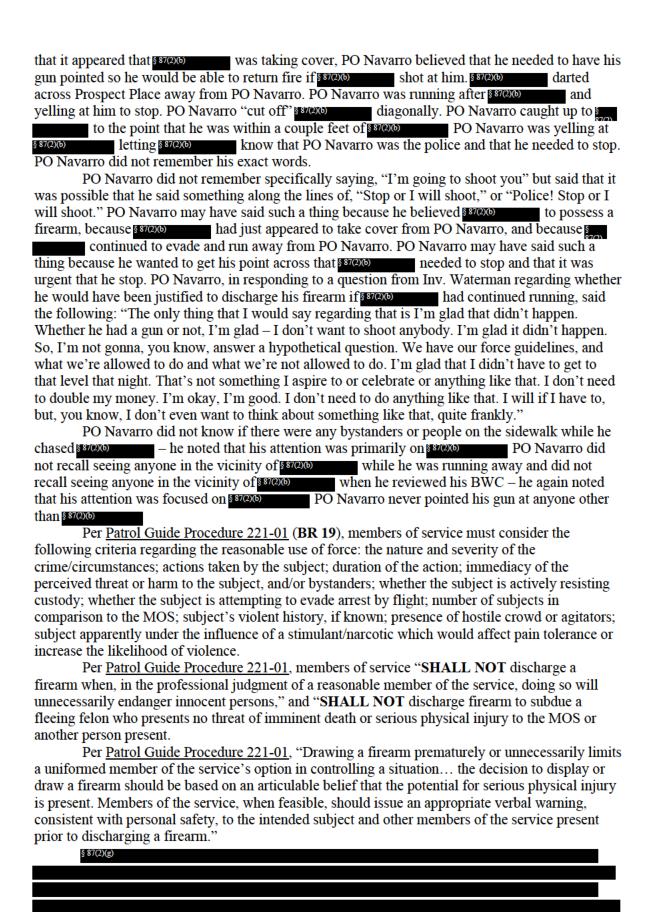
As written in <u>People v. Rhames, 196 A.D.3d 510</u> (**BR 12**), "in order to justify police pursuit, the officers must have reasonable suspicion that a crime has been, is being, or is about to be committed. Reasonable suspicion is that quantum of knowledge sufficient to induce an ordinarily prudent and cautious person under the circumstances to believe criminal activity is at hand. Relevant factors include, among others, the substance and reliability of the report that brought the officers to the scene, the nature of the crime that the police are investigating, the suspect's behavior and the shape, size, and location of any bulges in the suspect's clothing. A suspect's flight alone even his or her flight in conjunction with equivocal circumstances that might justify a police request for information, is insufficient to justify pursuit. When combined with other specific circumstances indicating that the suspect may be engaged in criminal activity, however, a suspect's flight may provide the predicate necessary to justify pursuit." The court further noted that a "police request for information" must be justified by an objective, credible reason that may not be necessarily indicative of criminality."

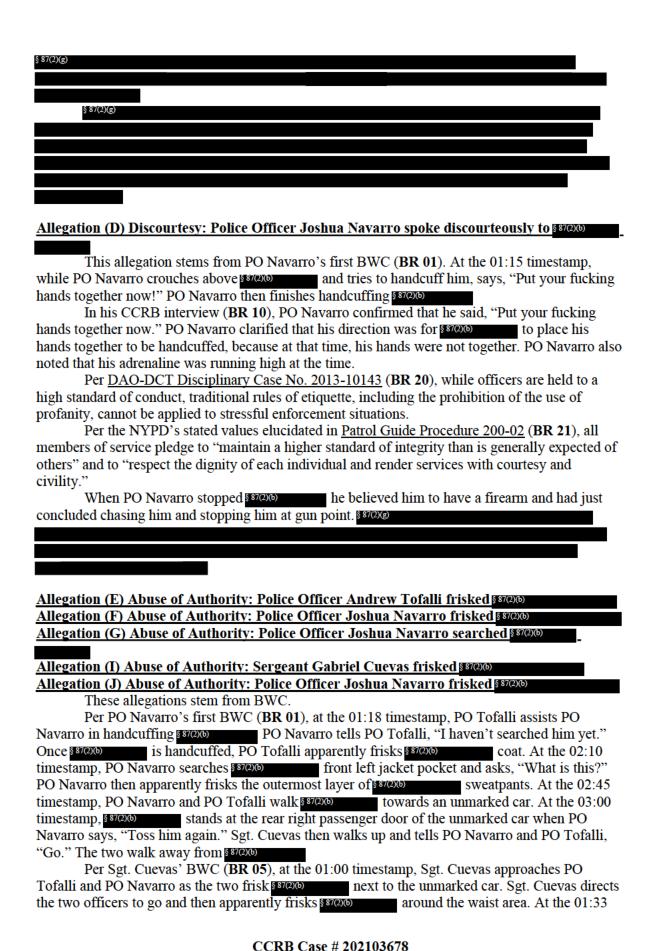
Per <u>People v. Crawford, 89 A.D.3d 422</u> (**BR 13**), an individual's flight, "when accompanied by nothing more than the presence of an object in his pocket that was unidentifiable even at close range, [does] not raise a reasonable suspicion that [they have] a gun or otherwise [is involved] in a crime." In the circumstance ruled upon in this case, officers described seeing an apparently heavy bulge in the defendant's pocket.

PO Navarro saw wearing an unseasonably warm outfit, saw him change his direction of travel upon making eye contact with PO Navarro, and saw him walk away. PO Navarro acknowledged that these factors, when considered alone or in conjunction, are innocuous absent other indicia of criminal activity.

PO Navarro saw [887(2)(6)] walk up to a dark area next to an accessibility ramp and saw
"doing something around his waist and readjusting and he keeps looking back while
he's doing it." The investigation, through the use of the New York City Department of Planning's
digital Zoning and Land Use map (BR 43), determined that was approximately 70
feet away from PO Navarro's car when he allegedly did "something around his waist" while
"looking back." Given the distance between and PO Navarro, the darkness of the area
where \$87(2)(6) was allegedly standing, and the generality of what PO Navarro allegedly
observed, § 87(2)(b) § 87(2)(g)
PO Navarro did not see any bulges on \$87000 person prior to approach. PO Navarro
told PO Tofalli that he was going to approach because he was acting strange and told
the investigation that he approached secure it was his job.
Fortham DO Normal and Advanced and the second and t
Furthermore, PO Navarro's suspicion that could be about to commit a robbery was speculation not supported by his observations or other factors.
spectuation not supported by his observations of other factors,
DO Navarro said that when \$37000 ran away \$37000 graphed his waisthand
PO Navarro said that when said that when ran away, said grabbed his waistband and started running as fast as he could while holding his waistband. Because of the way had to pick up the front of his jacket/upper hip area, the weight of the object, and





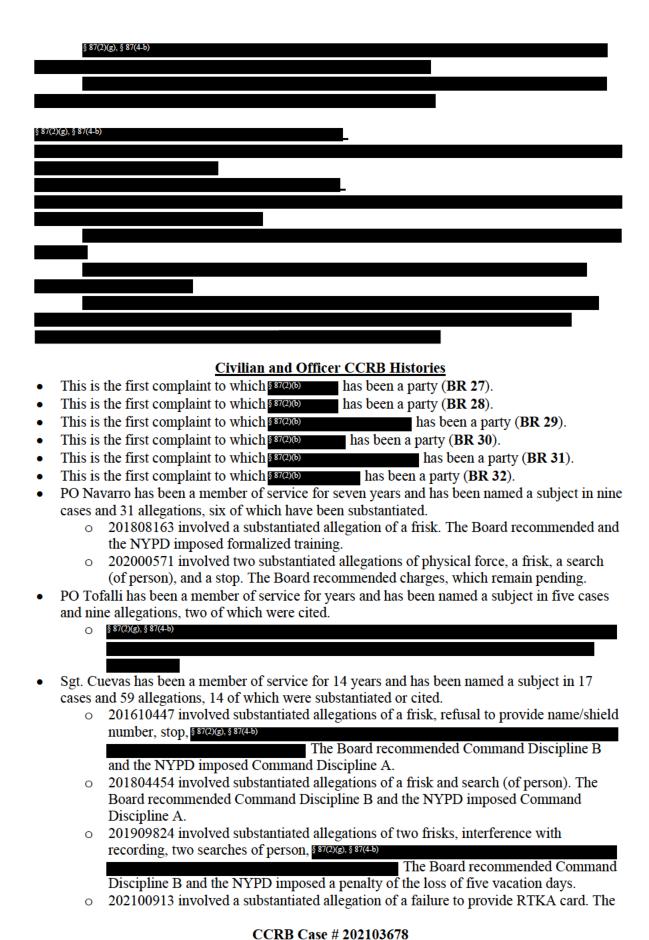


timestamp, Sgt. Cuevas tells [\$370]00 "I've just gotta make sure you don't have a gun on you, alright?" Sgt. Cuevas finishes his frisk and directs \$87(2)(6) to sit down in the car. PO Tofalli's second BWC (BR 07) captures the end of this incident. PO Tofalli removes at the 01:00 timestamp. Thereafter, PO Navarro for a third time PO Navarro does not explain why he frisks \$87(2)(6) In his stop report (BR 11), PO Navarro wrote that his basis for a frisk as: "Object observed suspected of being a weapon" and his basis for a search as: "hard object resembling weapon." In his CCRB interview (BR 10), PO Navarro said he frisked and searched the area of the clothing where \$87(2)(b) had previously grabbed. PO Navarro located a cell phone and a lighter. PO Navarro noted that he may have frisked and searched \$87(2)(6) later for the sake of thoroughness: he noted that frisking someone on the ground vs. frisking someone while standing was different given the movement of clothing and different weight distribution incumbent on the different position. In his CCRB interview (BR 22), PO Tofalli at first said he did not recall whether he frisked Upon reviewing PO Navarro's BWC, PO Tofalli said that he patted the individual down in pockets in the waist area for weapons. PO Tofalli said that PO Navarro informed him that the individual had not yet been searched (PO Tofalli heard this on the BWC), and thus he patted the individual down in the area where the individual was grabbing earlier. In his CCRB interview (BR 24), Sgt. Cuevas said he responded to the scene because PO Navarro called a 10-85 regarding the foot pursuit of an individual suspected of possession of a firearm. Sgt. Cuevas said that he understood \$87000 to be in custody but not under arrest at the time of the frisk. Sgt. Cuevas frisked \$87(2)(6) because he wanted to make sure he had no weapons or contraband prior to his placement inside the police car. Sgt. Cuevas did not recall feeling anything in the pocket while he grasped it. Per <u>People v. De Bour, 40 N.Y.2d 210</u> (BR 41), officers may frisk an individual only if the officer reasonably suspects that the individual is armed. Per People v. Ward, 161 A.D.3d 520 (BR 42), an officer who feels a hard object in an individual's jacket pocket may remove the object if they have reason to believe that the individual is armed and that their clothing may conceal a weapon. Sgt. Cuevas said that he suspected that \$87(2)(6) of possessing a weapon; regardless, \$87(2)(6) had already been frisked by PO Navarro and PO Tofalli with negative results for a weapon. SS/QOO PO Navarro also did not state that he felt any hard objects he believed to be weapons on person during the frisk, § 87(2)(g) Allegation (H) Discourtesy: Sergeant Gabriel Cuevas spoke discourteously to This allegation stems from Sgt. Cuevas' BWC (BR 05). At the 01:05 timestamp, while Sgt. Cuevas stands with sage outside a marked vehicle with two other officers, sage outside a marked vehicle with two other officers, says, "You buggin, bro." Sgt. Cuevas responds, "Don't talk shit to me, man." In his CCRB interview (BR 24), Sgt. Cuevas initially told the investigation that he did not recall whether he ever used any profanity with \$87000 After reviewing his BWC multiple times and once taking a break to consult with his counsel, Sgt. Cuevas said that his use of profanity in the statement, "Don't talk shit to me," was, in his words, "just something that came out" and that his intent was not malicious.

Per <u>DAO-DCT Disciplinary Case No. 2013-10143</u> (**BR 20**), while officers are held to a high standard of conduct, traditional rules of etiquette, including the prohibition of the use of profanity, cannot be applied to stressful enforcement situations.

Per the NYPD's stated values elucidated in <u>Patrol Guide Procedure 200-02</u> (**BR 21**), all members of service pledge to "maintain a higher standard of integrity than is generally expected of others" and to "respect the dignity of each individual and render services with courtesy and civility."

§ 87(2)(g)
Allegation (K) Abuse of Authority: Police Officer Joshua Navarro failed to provide
with a business card.
Allegation (L) Abuse of Authority: Police Officer Andrew Tofalli failed to provide \$87000
with a business card.
Allegation (M) Abuse of Authority: Sergeant Gabriel Cuevas failed to provide \$57,000
with a business card.
In his CCRB interview (BR 10), PO Navarro said that, after frisking and searching
(see Allegations F and G), he canvassed \$87(2)(6) route of travel for a firearm. PO
Navarro did not remember if he had any further interaction with the individual during or after his
canvass of the surrounding area. PO Navarro did not believe that he provided \$87(2)(6) with a
business card.
In his stop report (BR 11), PO Navarro wrote in response to the field, "Business Card
Offered to Person Stopped," "Yes."
In neither of PO Navarro's BWCs (BR 01-02) does he offer with a business
card.
PO Tofalli's second BWC (BR 07) captures the end of this incident. PO Tofalli removes
the handcuffs from \$87(2)(6) at the 01:00 timestamp. Thereafter, PO Navarro frisks
PO Navarro does not explain why he frisks \$87(2)(6) PO Navarro asks \$87(2)(6)
at the 01:38 timestamp if \$87(2)(6) wants PO Navarro to explain what happened.
responds, but it is unclear if it is in the affirmative or negative. Seronds begins to walk away
and PO Navarro says, "Have a nice night, bro." Neither PO Navarro nor PO Tofalli offer
a business card.
PO Navarro's BWC did not capture this portion of the incident (see Allegation N).
In his CCRB interview (BR 22), PO Tofalli said that he knew that he was supposed to
provide a business card to \$87(2)(0) and believed that he did not do so.
In his CCRB interview (BR 24), Sgt. Cuevas said that he did not provide a business card to
and did not see any other officers do so.
Per Administrative Guide Procedure 304-11 (BR 25) and New York City Administrative
Code 14-174 (BR 26), members of service are to proactively offer a business card to members of
the public after the conclusion of a stop, frisk, and search of person except in cases where
summonses are issued or arrests are made.
PO Navarro stopped, frisked, and searched (1972) but did not offer a business card
at the conclusion of the incident as required. PO Tofalli and Sgt. Cuevas frisked \$87000 but
did not offer a business card at the conclusion of this incident as required.
§ 87(2)(g), § 87(4-b)



Board recommended Command Discipline A and the NYPD imposed penalty is pending.

Mediation, Civil, and Criminal Histories

- This complaint was not suitable for mediation.
- As of February 15, 2022, the New York City Office of the Comptroller had no record of any Notices of Claim being filed regarding this incident (**BR 33**).

[8 87(2)(0)] [88 80(1)(.	5)&(4)] [§ 81(2)(c)]		
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Squad: <u>1</u>	0		
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Investigator: _	Ethan C. Waterman	Inv. Ethan Waterman	06/29/2022
	Signature	Print Title & Name	Date
Canad Landam	Mayea D. Daaha	IM Moure D. Doobo	06/20/2022
Squad Leader: _		IM Maura R. Roche Print Title & Name	06/29/2022
	Signature	Print Title & Name	Date
Reviewer:			
_	Signature	Print Title & Name	Date